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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,606	08/09/2001	Catherine O'Neill		8194

7590

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EXAMINER

NEWHOUSE, NATHAN JEFFREY

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 08/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/927,606

Applicant(s)

O'NEILL, CATHERINE

Examiner

Nathan J. Newhouse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sidewall extending towards the top surface of the lid must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

While applicant has stated that the sidewall extending towards the top surface of the lid is the opposite of the sidewall extending away from the top surface of the lid which is depicted, it is unclear exactly what this structure would look like. Moreover, it is unclear how the mounting member which attaches to the container would function on the sidewall that extends away from the top surface of the lid.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 9 and 13-14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to claims 9 and 13, there is no support in the originally filed specification for the substrate of the resealable tab having certain shapes, i.e., triangle, quadrangle, hexagon,

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octagon, star, moon and heart. With respect to the shape being quadrangle, while a rectangle is a quadrangle, a quadrangle is broader than a rectangle. As applicant has only set forth a rectangle, there is insufficient support for applicant to claim a quadrangle. Furthermore, applicant sets forth that the substrate of the resealable tab comprises one or more of the shapes as set forth in claim 9 and 13. There is insufficient support for this language as applicant has not set forth that all of the different shapes could be combined to form the tab. (Applicant has only set forth a combination of a circle and a rectangle as set forth on page 20.) This is a new matter rejection.

With respect to claim 14, there is no support in the originally filed specification for the resealable tab having different colors and logos thereon. While applicant has disclosed different shapes, there is no mention of different colors or logos on the resealable tab. This is a new matter rejection.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 9 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

The phrase "including, but not limited to" makes these claims unclear as to what the metes and bounds of the claims are.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6, 10-16 and 23-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitko et al. '992 in view of Lu et al. '267.

Sitko et al. teaches a lid 10 with a top surface, a sidewall extending therefrom with means to engage 13(mount member) and snap on the cup. See column 2, lines 35-48. Sitko et al. further teaches an opening 16 covered by a resealable tab 30. See column 3, line 42 through column 4, line 2. Sitko et al. does not teach a food grade adhesive to attach the resealable tab.

Lu et al. teaches the use of polyurethane adhesive to attach/adhere a tape tab closure to beverage cans. The beverage cans can contain both pressurized(carbonated) or unpressurized contents. The polyurethane adhesive must be a food grade adhesive and resealable as this is the particular type of adhesive used by applicant. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adhere the resealable tab 30 of Sitko et al. with a polyurethane adhesive as Lu et al. teaches that this type of adhesive will work on beverage cans of this type.

8. Claims 10-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds et al. '368 in view of Lu et al. '267.

Reynolds et al. teaches tab 13 which may be made of aluminum or rigid stiff plastic polystyrene. Reynolds et al. further teaches that different shape tabs may be used depending upon the beverage can the tabs are applied and/or the shape of the opening to be closed. See

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especially figure 6, showing round or oval tabs with protruding lifting members. Reynolds et al. does not teach the tab having a polyurethane adhesive to attach the tabs to a lid.

Lu et al. teaches the use of polyurethane adhesive to attach/adhere a tape tab closure to beverage cans. The beverage cans can contain both pressurized(carbonated) or unpressurized contents. The polyurethane adhesive must be a food grade adhesive and resealable as this is the particular type of adhesive used by applicant. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adhere the resealable tab of Reynolds et al. with a polyurethane adhesive as Lu et al. teaches that this type of adhesive will work on beverage cans of this type.

9. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clements '569 in view of Sitko et al. '992 and Lu et al. '267.

Clements teaches a beverage lid with a recess 30 to allow for a user's mouth to closely fit around a drinking opening 20. Clements does not teach a resealable tab to cover the opening and the tab being attached by polyurethane adhesive.

Sitko et al. teaches a lid 10 with a top surface, a sidewall extending therefrom with means to engage 13(mount member) and snap on the cup. See column 2, lines 35-48. Sitko et al. further teaches an opening 16 covered by a resealable tab 30. See column 3, line 42 through column 4, line 2. Lu et al. teaches the use of polyurethane adhesive to attach/adhere a tape tab closure to beverage cans. The beverage cans can contain both pressurized(carbonated) or unpressurized contents. The polyurethane adhesive must be a food grade adhesive and resealable as this is the particular type of adhesive used by applicant. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a

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resealable tab as taught by Sitko et al. to allow for opening/closing of the lid of Clements.

Furthermore, it would have been obvious to one ordinary skill in the art at the time of the invention to adhere the resealable tab 30 of Sitko et al. with a polyurethane adhesive as Lu et al. teaches that this type of adhesive will work on beverage cans of this type.

### *Response to Arguments*

10. Applicant's arguments filed June 2, 2003 have been fully considered but they are not persuasive.

Applicant argues that none of the rejections set forth are proper as none of the combinations teach a resealable tab. As set forth in the above rejections, Lu et al. teaches a polyurethane adhesive to attach/adhere a tape tab closure to beverage cans that can container both pressurized(carbonated) or unpressurized contents. The polyurethane adhesive must be a food grade adhesive and resealable as this is the particular type of adhesive used by applicant. As further evidence that polyurethane adhesive is resealable, Nakamura(US 4,790,436) teaches a resealable tab 14 that is adhered to the container by polyurethane adhesive. See col. 4, lines 56-63 and col. 6, lines 3-13.

### *Conclusion*

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

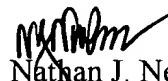
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan J. Newhouse whose telephone number is (703)-308-4158. The examiner can normally be reached on Monday-Thursday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (703)-308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.

  
Nathan J. Newhouse  
Primary Examiner  
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